

FILED

SEP 14 2005

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER) Nos. 04-1345, 04-1389, 04-1837
OF THE STATE BAR OF ARIZONA,) 04-1927, 04-1956, 04-1997
) 04-2052
DAVID SON,)
Bar No. 019312)
) **HEARING OFFICER'S REPORT**
)
RESPONDENT.)

PROCEDURAL HISTORY

Probable Cause Orders were filed on March 14, 2005, April 4, 2005 and January 27, 2005. A one-count Complaint was filed on May 9, 2005 and served by mail on May 11, 2005. Respondent did not file an answer; therefore, the Disciplinary Clerk entered a Default on June 28, 2005. An aggravation/mitigation hearing was held on August 9, 2005. Patricia A. Sallen appeared on behalf of the State Bar. Respondent did not appear.

FINDINGS OF FACT

1
2 1. At all relevant times, Respondent was an attorney licensed to
3 practice law in Arizona, having been admitted to practice in this state on October
4 16, 1998.¹ [TR 8:15-24]

6 2. On or about January 21, 2005, Respondent was summarily
7 suspended for failure to comply with mandatory continuing legal education
8 requirements. [Complaint ¶ 2] Respondent remains suspended pursuant to Rule
9 45(h), Ariz.R.S.Ct. [Complaint ¶ 3]

11 3. Respondent has abandoned his practice and, when contacted via
12 telephone by the State Bar's staff investigator in mid-November 2004, refused to
13 give an address where he could be located, insisting instead that the State Bar
14 send material to his address of record (his office) because he would pick up mail
15 there. [Complaint ¶ 4]

17 4. On January 27, 2005, the State Bar filed a petition in Superior Court
18 seeking to have Chief Bar Counsel Robert Van Wyck appointed as conservator
19 over Respondent's client files and trust account. [Complaint ¶ 5] By order dated
20 February 3, 2005, Superior Court Presiding Judge Colin F. Campbell appointed
21
22
23
24

25 ¹ The complaint erroneously alleged that Respondent had been admitted to practice on April 22, 1978. [Complaint ¶ 1] The State Bar corrected this error at the aggravation and mitigation hearing. [TR 8:15-24]

1 Mr. Van Wyck as conservator over Respondent's client files and trust account.

2 [Complaint ¶ 6]

3 **Count one (file no. 04-1345/trust account)**

4
5 5. On August 5, 2004, the State Bar received a non-sufficient funds
6 notice on Respondent's Bank of America client-trust account. [Complaint ¶ 7]

7 The bank notice indicated that four checks attempted to pay against the account
8 when the balance was insufficient. [Complaint ¶ 8] Checks 1138 and 1139 (each
9 for \$209) were paid while checks 1140 and 1142 (each for \$209) were returned.
10 [Complaint ¶ 9] After paying checks 1138 and 1139, the account had a negative
11 balance of \$624. [Complaint ¶ 10]

12
13
14 6. On August 18, 2004, the State Bar's records examiner sent an initial
15 screening letter with a copy of the non-sufficient funds notice. The letter also
16 requested that Respondent address the ethical violations in his response within 20
17 days. [Complaint ¶ 11]

18
19 7. On September 9, 2004, Respondent left a message for the records
20 examiner requesting another copy of the August 18, 2004, screening letter.
21 Respondent indicated that he wanted to respond to the State Bar's inquiry but had
22 lost the original August 18, 2004, letter. [Complaint ¶ 12]

23
24 8. Respondent failed thereafter to respond to the August 18, 2004,
25 screening letter. [Complaint ¶ 13]

1 9. On September 29, 2004, the records examiner sent a reminder letter
2 to Respondent referencing the original screening inquiry and requested a response
3 within 20 days. Respondent failed to respond to the reminder letter. [Complaint ¶
4 14]
5

6 10. On October 21, 2004, the records examiner sent a third reminder
7 letter to Respondent. Respondent again failed to respond. [Complaint ¶ 15]
8

9 11. The State Bar subpoenaed Respondent's client trust-account records
10 for June 1, 2004, through August 31, 2004. [Complaint ¶ 16]
11

12 12. The subpoenaed trust-account records revealed:
13

14 a) As of June 1, 2004, the balance in Respondent's trust account was
15 negative \$199, but the State Bar had never received notice of this;
16

17 b) Checks 1138, 1139, 1140 and 1141 were all written to "Clerk, U.S.
18 Bankruptcy" for different clients;
19

20 c) All funds deposited to the account made from June 1, 2004, through
21 August 30, 2004, were by online transfer or cash deposit, with the
22 possible exception of a \$2,500 deposit made on August 30, 2004, for
23 which the bank did not submit records;
24

25 d) On July 23, 2004, Respondent made an online transfer of \$400 from
the trust account to the same account he had been using to make
deposits into the trust account; and

1 e) Respondent either was depositing his own funds into the trust
2 account to cover disbursed checks or was depositing client funds into
3 his own account and then transferring to the trust account.
4

5 [Complaint ¶ 17]

6 **Count two (file no. 04-1389/Bell)**

7 13. On or about May 16, 2004, Bonnie Bell ("Ms. Bell") consulted with
8 Respondent to discuss a potential medical malpractice lawsuit. [Complaint ¶ 20]
9 Respondent assured Ms. Bell that she had a viable case and indicated that he
10 would contact Ms. Bell once he had the opportunity to conduct some research and
11 consult with another attorney. [Complaint ¶ 21]
12

13 14. For three months, Ms. Bell unsuccessfully attempted to contact
14 Respondent. [Complaint ¶ 22] On numerous occasions Respondent's secretary
15 informed Ms. Bell that both Respondent and the attorney consulted by
16 Respondent agreed that Ms. Bell had a viable case. Respondent's secretary
17 assured Ms. Bell that Respondent would contact her to discuss the matter.
18 [Complaint ¶ 23] Ms. Bell waited for more than three months for Respondent to
19 contact her, but Respondent failed to do so. [Complaint ¶ 24]
20
21

22 15. On August 10, 2004, Ms. Bell submitted her complaint against
23 Respondent to the State Bar. [Complaint ¶ 25] By letter dated December 6, 2004,
24
25

1 mailed to Respondent's address of record, the State Bar informed Respondent of
2 Ms. Bell's allegations. [Complaint ¶ 26]

3
4 16. The State Bar's letter requested that Respondent respond to the
5 allegations within 20 days. [Complaint ¶ 27] Respondent failed to respond to the
6 December 6, 2004, letter. [Complaint ¶ 28]

7
8 **Count three (file no. 04-1837/Weide)**

9 17. On September 25, 2004, Richard Weide ("Mr. Weide") retained
10 Respondent to represent him in a child-support matter. [Complaint ¶ 31] Mr.
11 Weide paid \$1,500 to Respondent to file a response on his behalf and otherwise
12 represent him throughout the child-support matter. [Complaint ¶ 32]

13
14 18. Mr. Weide unsuccessfully attempted to contact Respondent for about
15 three weeks to obtain information regarding his case. [Complaint ¶ 33] After
16 about one and one-half weeks of unsuccessful telephone calls, Mr. Weide spoke
17 with Respondent's secretary, who informed him that the best time to reach
18 Respondent was after 4 p.m. on weekdays. [Complaint ¶ 34] For the following
19 one and one-half weeks, Mr. Weide consistently attempted to contact Respondent
20 every weekday after 4 p.m. [Complaint ¶ 35]

21
22 19. In late October 2004, Mr. Weide discovered that Respondent's
23 telephone number had been disconnected. [Complaint ¶ 36] Mr. Weide found
24 Respondent's office empty of all furniture. [Complaint ¶ 37]
25

1 20. On October 28, 2004, Mr. Weide submitted his complaint against
2 Respondent to the State Bar. [Complaint ¶ 38]

3 21. By letter dated December 15, 2004, mailed to Respondent's address
4 of record, the State Bar informed Respondent of Mr. Weide's allegations.
5 [Complaint ¶ 39] The State Bar's letter requested that Respondent respond to the
6 allegations within 20 days. [Complaint ¶ 40]

7 22. Respondent failed to respond to the December 15, 2004, letter.
8 [Complaint ¶ 41]

9 23. At the aggravation and mitigation hearing, the State Bar advised that
10 according to Mr. Weide, Respondent had refunded his money and returned his
11 file to him. [TR 9:7-12]

12 **Count four (file no. 04-1927/Holder)**

13 24. On September 7, 2004, Carolyn Holder ("Ms. Holder") paid
14 Respondent \$1,700 to represent her in divorce proceedings. [Complaint ¶ 44]

15 25. Ms. Holder filled out and signed the required paperwork to initiate
16 the divorce proceedings and returned the documents to Respondent. [Complaint ¶
17 45] Respondent failed to file any of the documents with the court. [Complaint ¶
18 46]

19 26. For several weeks, Ms. Holder unsuccessfully attempted to contact
20 Respondent by telephone and facsimile. [Complaint ¶ 47] After discovering that
21
22
23
24
25

1 Respondent's telephone had been disconnected, Ms. Holder attempted to contact
2 Respondent at his office only to find it vacated. [Complaint ¶ 48]

3 27. On November 7, 2004, Ms. Holder submitted her complaint against
4 Respondent to the State Bar. [Complaint ¶ 49]

5 28. By letter dated December 15, 2004, mailed to Respondent's address
6 of record with the State Bar, the State Bar informed Respondent of Ms. Holder's
7 allegations. [Complaint ¶ 50]

8 29. The State Bar's letter requested that Respondent respond to the
9 allegations within 20 days. [Complaint ¶ 51] Respondent failed to respond to the
10 December 15, 2004, letter. [Complaint ¶ 52]

11 **Count five (file no. 04-1956/Gross)**

12 30. In May 2003, Susan Gross ("Ms. Gross") consulted with Respondent
13 to obtain advice regarding agreement and release documents related to the
14 settlement of a personal-injury matter. [Complaint ¶ 55]

15 31. Ms. Gross had been injured during a job interview, the company
16 admitted fault and had agreed to pay Ms. Gross's medical expenses up to
17 \$10,000. [Complaint ¶ 56]

18 32. During the consultation with Ms. Gross, Respondent suggested that
19 he could represent her in the matter and possibly get her a settlement of \$25,000.
20 [Complaint ¶ 57]

1 33. For approximately one year, Ms. Gross attempted to contact
2 Respondent regarding the status of her case. Respondent failed to return any of
3 Ms. Gross's telephone calls. [Complaint ¶ 58] Concurrently with her telephone
4 calls to the office, Ms. Gross attempted to schedule appointments with
5 Respondent but was told by his secretary that he was too booked up. [Complaint ¶
6 59] During the few times that Ms. Gross was able to meet with Respondent, he
7 assured her that he was working on her case. [Complaint ¶ 60]
8

9
10 34. After Ms. Gross filed a complaint with the State Bar against
11 Respondent on November 18, 2004, Respondent started negotiating Ms. Gross's
12 settlement with the insurance company. [Complaint ¶ 61]
13

14 35. At one point, Respondent apologized to Ms. Gross for putting things
15 "on the back burner" and forgetting about her case. [Complaint ¶ 62]
16

17 36. In November 2004, after several more unsuccessful attempts to
18 contact him, Ms. Gross discovered that Respondent had closed his office.
19 [Complaint ¶ 63]

20 37. Ms. Gross spoke with the office building's landlord, who informed
21 her that he also was looking for Respondent. According to the landlord,
22 Respondent had not paid his office rent and did not leave a forwarding address.
23 [Complaint ¶ 64]
24
25

1 38. By letter dated December 15, 2004, mailed to Respondent's address
2 of record with the State Bar, the State Bar informed Respondent of the allegations
3 received from Ms. Gross concerning his conduct. [Complaint ¶ 65]
4

5 39. The State Bar's letter requested that Respondent respond to the
6 allegations within 20 days. [Complaint ¶ 66] Respondent failed to respond to the
7 December 15, 2004, letter. [Complaint ¶ 67]
8

9 40. At the aggravation and mitigation hearing, the State Bar advised that
10 Ms. Gross's file was among the files the State Bar took possession of when it
11 obtained the conservatorship over Respondent's files and trust account. [TR 11:6-
12 12] As a result, Respondent obviously had never returned Ms. Gross's file to her.²
13

14 **Count six (file no. 04-1997/Whitehead)**

15 41. On September 28, 2004, William Whitehead ("Mr. Whitehead")
16 retained Respondent to represent him in a bankruptcy matter. [Complaint ¶ 70]
17

18 42. Mr. Whitehead paid Respondent \$750 as attorney's fees and was
19 informed that an additional \$750 in cash would be required to pay the filing fees
20 at the time of the bankruptcy filing. [Complaint ¶ 71]
21
22
23

24 ² Ms. Bell's file also was among those that the State Bar took possession of when it obtained
25 the conservatorship over Respondent's files and trust account. However, at the aggravation and
mitigation hearing, bar counsel neglected to explain that the State Bar had taken possession of
Ms. Bell's file. As a result, a finding similar to ¶ 40 is not included for Ms. Bell in count two.

1 43. Mr. Whitehead completed a questionnaire provided to him by
2 Respondent and on October 9, 2004, mailed it, along with copies of all his bills
3 and income information, via UPS to Respondent. [Complaint ¶ 72]
4

5 44. Mr. Whitehead received confirmation that Respondent signed for the
6 UPS package on October 12, 2004. [Complaint ¶ 73] Nonetheless, on October 18,
7 2004, Mr. Whitehead emailed Respondent to confirm that Respondent possessed
8 the UPS package. [Complaint ¶ 74]
9

10 45. On October 21, 2004, after Respondent failed to respond to his first
11 email, Mr. Whitehead documented his concerns with the lack of communication
12 in a second email to Respondent. [Complaint ¶ 75]
13

14 46. On October 28, 2004 Mr. Whitehead again emailed Respondent, this
15 time to notify Respondent that he was terminating his services. At that time Mr.
16 Whitehead also requested a full refund of the \$750 retainer minus the charges for
17 the one-half hour initial consultation fee. [Complaint ¶ 76]
18

19 47. Mr. Whitehead then discovered that Respondent had moved out of
20 his office, had his telephone disconnected and left no forwarding address or
21 telephone number. [Complaint ¶ 77]
22

23 48. On November 19, 2004, Mr. Whitehead submitted his complaint
24 against Respondent to the State Bar. [Complaint ¶ 78]
25

1 49. By letter dated January 24, 2005, mailed to Respondent's address of
2 record, the State Bar informed Respondent of the allegations received from Mr.
3 Whitehead concerning his conduct. [Complaint ¶ 79]
4

5 50. The State Bar's letter requested that Respondent respond to the
6 allegations within 20 days. [Complaint ¶ 80] Respondent failed to respond to the
7 January 24, 2005, letter. [Complaint ¶ 81]
8

9 51. At the aggravation and mitigation hearing, the State Bar introduced
10 an affidavit [TR 9:16-25; Exhibit 6] from Mr. Whitehead in which he avowed that
11 Respondent never refunded money to him nor returned his file. Instead, Mr.
12 Whitehead received his file from the State Bar when the State Bar obtained the
13 conservatorship over Respondent's files and trust accounts.
14

15 **Count seven (file no. 04-2052/Griffith)**

16 52. In September 2004, Pamela Griffith (Ms. Griffith") retained
17 Respondent to represent her in a bankruptcy matter. [Complaint ¶ 84] Ms. Griffith
18 paid Respondent \$200 as attorney's fees and \$550 as Chapter 13 bankruptcy
19 filing fees, for a total payment of \$750. [Complaint ¶ 85]
20

21 53. Respondent filed the initial Chapter 13 bankruptcy documents but
22 then failed to show up at an October 20, 2004, meeting with the Chapter 13
23 trustee to discuss the fact that the documents prepared by Respondent for Ms.
24
25

1 Griffith were incomplete. [Complaint ¶¶ 86, 87] Ms. Griffith conducted the
2 meeting with the trustee by herself. [Complaint ¶ 88]

3
4 54. For two weeks following the meeting with the trustee, Ms. Griffith
5 unsuccessfully attempted to contact Respondent via telephone and mail.
6 [Complaint ¶ 89] Respondent failed to return Ms. Griffith's telephone calls or
7 provide any response to her letter. [Complaint ¶ 90]

8
9 55. Due to Respondent's failure to submit the required bankruptcy
10 filings, the Bankruptcy Court dismissed Ms. Griffith's case by order dated
11 November 8, 2004. [Complaint ¶ 91] Ms. Griffith was forced to hire substitute
12 counsel to pursue her bankruptcy. [Complaint ¶ 92]

13
14 56. On October 22, 2004, Ms. Griffith submitted her complaint against
15 Respondent to the State Bar. [Complaint ¶ 93]

16
17 57. By letter dated December 21, 2004, mailed to Respondent's address
18 of record with the State Bar, the State Bar informed Respondent of the allegations
19 received from Ms. Griffith concerning his conduct. [Complaint ¶ 94] The State
20 Bar's letter requested that Respondent respond to the allegations within 20 days.
21 [Complaint ¶ 95] Respondent failed to respond to the December 21, 2004, letter.
22 [Complaint ¶ 96]

23
24 58. At the aggravation and mitigation hearing, the State Bar introduced
25 an affidavit [TR 10:1-10; Exhibit 7] from Ms. Griffith in which she advised that

1 in October 2004, she had received a letter from Respondent in which he said he
2 was "retiring" from the practice of law. Respondent enclosed her documents with
3 the letter, but no refund.
4

5 CONCLUSIONS OF LAW

6 **Count one (file no. 04-1345/trust account)**

7 1. By failing to hold client property separate from his own and failing
8 to safeguard client property, Respondent violated ER 1.15, Rule 42, Ariz.R.S.Ct.,
9 and Rules 43 and 44, Ariz.R.S.Ct. Respondent either deposited his own funds into
10 his trust account to cover the checks disbursed from it or deposited client funds
11 into his own account prior to depositing them into the trust account.
12

13 2. By failing to safeguard client property, Respondent violated ER 1.15,
14 Rule 42, Ariz.R.S.Ct., and Rules 43 and 44, Ariz.R.S.Ct.
15

16 3. By knowingly failing to respond to the State Bar's lawful demand for
17 information, Respondent violated ER 8.1(b), Rule 42, Ariz.R.S.Ct., and Rule
18 53(d) and (f), Ariz.R.S.Ct.
19

20 **Count two (file no. 04-1389/Bell)**

21 4. By failing to review and assess Ms. Bell's medical-malpractice case,
22 Respondent failed to abide by his client's decisions concerning the objectives of
23 the representation, carry out the client's representation and act with reasonable
24
25

1 diligence and promptness in representing the client, thus violating ERs 1.2, 1.3
2 and 3.2, Rule 42, Ariz.R.S.Ct.

3 5. By failing to communicate with Ms. Bell, Respondent violated ER
4 1.4, Rule 42, Ariz.R.S.Ct.

6 6. By failing to take steps to protect Ms. Bell's interest when he
7 stopped working on her case, Respondent violated ER 1.16, Rule 42, Ariz.R.S.Ct.

8 7. By knowingly failed to respond to a lawful demand for information
9 from the State Bar, Respondent violated ER 8.1(b), Rule 42, Ariz.R.S.Ct., and
10 Rule 53 (d) and (f), Ariz.R.S.Ct.

12 **Count three (file no. 04-1837/Weide)**

13 8. By failing to pursue Mr. Weide's child-support matter, Respondent
14 violated ERs 1.2, 1.3 and 3.2, Rule 42, Ariz.R.S.Ct.

16 9. By failing to communicate with Mr. Weide, Respondent violated ER
17 1.4, Rule 42, Ariz.R.S.Ct.

18 10. By failing to take steps to protect Mr. Weide's interest when he
19 failed to work on his case, Respondent violated ER 1.16, Rule 42, Ariz.R.S.Ct.

21 11. By taking a \$1,500 fee from Mr. Weide without performing any
22 work on Mr. Weide's legal matter, Respondent charged an unreasonable fee, thus
23 violating ER 1.5, Rule 42, Ariz.R.S.Ct.

1 12. By failing to return funds to Mr. Weide when he failed to perform
2 any services, Respondent violated ER 1.15, Ariz.R.S.Ct.

3 13. By knowingly failing to respond to a lawful demand for information
4 from the State Bar, Respondent violated ER 8.1(b), Rule 42, Ariz.R.S.Ct., and
5 Rule 53(d) and (f), Ariz.R.S.Ct.
6

7 **Count four (file no. 04-1927/Holder)**

8 14. By failing to pursue Ms. Holder's divorce, Respondent violated ERs
9 1.2, 1.3 and 3.2, Rule 42, Ariz.R.S.Ct.
10

11 15. By failing to communicate with Ms. Holder, Respondent violated ER
12 1.4, Rule 42, Ariz.R.S.Ct.
13

14 16. By taking \$1,700 from Ms. Holder without performing any work on
15 her legal matter, Respondent violated ER 1.5, Rule 42, Ariz.R.S.Ct.

16 17. By failing to return funds to Ms. Holder when he failed to perform
17 any services, Respondent violated ER 1.15, Ariz.R.S.Ct.
18

19 18. By failing to take steps to protect Ms. Holder's interest when he
20 failed to work on her case, Respondent violated ER 1.16, Rule 42, Ariz.R.S.Ct.

21 19. By knowingly failing to respond to a lawful demand for information
22 from the State Bar, Respondent violated ER 8.1(b), Rule 42, Ariz.R.S.Ct., and
23 Rule 53(d) and (f), Ariz.R.S.Ct.
24

25 **Count five (file no. 04-1956/Gross)**

1 20. By failing to pursue Ms. Gross' case, Respondent violated ERs 1.2,
2 1.3 and 3.2, Rule 42, Ariz.R.S.Ct.

3 21. By failing to communicate with Ms. Gross, Respondent violated ER
4 1.4, Rule 42, Ariz.R.S.Ct.

5 22. By failing to take steps to protect Ms. Gross's interest when he failed
6 to work on her case, Respondent violated ER 1.16, Rule 42, Ariz.R.S.Ct.

7 23. By knowingly failing to respond to a lawful demand for information
8 from the State Bar, Respondent violated ER 8.1(b), Rule 42, Ariz.R.S.Ct., and
9 Rule 53(d) and (f), Ariz.R.S.Ct.

10
11
12 **Count six (file no. 04-1997/Whitehead)**

13 24. By failing to pursue Mr. Whitehead's bankruptcy, Respondent
14 violated ERs 1.2, 1.3 and 3.2, Rule 42, Ariz.R.S.Ct.

15 25. By failing to communicate with Mr. Whitehead, Respondent violated
16 ER 1.4, Rule 42, Ariz.R.S.Ct.

17 26. By taking \$750 in fees from Mr. Whitehead and failing to perform
18 any work for him, Respondent violated ER 1.5, Rule 42, Ariz.R.S.Ct.

19 27. By failing to return funds to Mr. Whitehead when he failed to
20 perform any services, Respondent violated ER 1.15, Ariz.R.S.Ct.

21 28. By failing to take steps to protect Mr. Whitehead's interests when he
22 failed to work on his case, Respondent violated ER 1.16, Rule 42, Ariz.R.S.Ct.
23
24
25

1 29. By knowingly failing to respond to a lawful demand for information
2 from the State Bar, Respondent violated ER 8.1(b), Rule 42, Ariz.R.S.Ct., and
3 Rule 53(d) and (f), Ariz.R.S.Ct.
4

5 **Count seven (file no. 04-2052/Griffith)**

6 30. By failing to pursue Ms. Griffith's bankruptcy matter and by failing
7 to appear at the meeting with the trustee, Respondent violated ERs 1.2, 1.3 and
8 3.2, Rule 42, Ariz.R.S.Ct.
9

10 31. By failing to communicate with Ms. Holder, Respondent violated ER
11 1.4, Rule 42, Ariz.R.S.Ct.

12 32. By taking \$750 in fees from Ms. Griffith and not completing her
13 bankruptcy, Respondent violated ER 1.5, Rule 42, Ariz.R.S.Ct.
14

15 33. By failing to return funds to Ms. Holder when he failed to complete
16 work on her case, Respondent violated ER 1.15, Ariz.R.S.Ct.

17 34. By failing to take steps to protect Ms. Griffith's interest when he
18 terminated his work on her case, Respondent violated ER 1.16, Rule 42,
19 Ariz.R.S.Ct.
20

21 35. By knowingly failing to respond to a lawful demand for information
22 from the State Bar, Respondent violated ER 8.1(b), Rule 42, Ariz.R.S.Ct., and
23 Rule 53(d) and (f), Ariz.R.S.Ct.
24
25

ABA STANDARDS

The ABA *Standards* list the following factors to consider in imposing the appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating circumstances. ABA *Standard* 3.0.

In the view of the Hearing Officer *Standard* 4.4 is the most applicable in this matter. A review of ABA *Standard* 4.0 (Violations of Duties Owed to Clients) indicates that disbarment is the presumptive sanction for Respondent's misconduct. *Standard* 4.41 (Lack of Diligence) specifically provides:

Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Under the admitted facts as detailed in the complaint, Respondent took money from three clients and failed to perform any work. Mr. Weide (count 3) paid him \$750 to pursue a child-support matter; Ms. Holder (count 4) paid \$1,700 for a divorce; and Mr. Whitehead (count 6) paid \$750 for a bankruptcy. In a fourth case, he took \$750 from Ms. Griffith (count 7) and, while he filed the bankruptcy petition, he never corrected deficiencies in the petition and failed to attend a meeting with the bankruptcy trustee, resulting in the case being

1 dismissed. All four of these clients thus lost money by engaging Respondent to
2 represent them.

3 AGGRAVATING AND MITIGATING FACTORS

4
5 This Hearing Officer then considered aggravating and mitigating factors in
6 this case, pursuant to *Standards* 9.22 and 9.32, respectively.

7 Pattern of misconduct (*Standard* 9.22(c)). Respondent failed to respond to
8 clients, act diligently and cooperate with the State Bar in all six client-related
9 counts.
10

11 Multiple offenses (*Standard* 9.22(d)). The formal complaint details his
12 misconduct, not in just one case, but in seven cases.

13
14 Bad-faith obstruction of the disciplinary proceeding of the disciplinary
15 proceedings by intentionally failing to comply with rules or orders of the
16 disciplinary agency (*Standard* 9.22(e)). Respondent knew about the screening
17 investigation in the trust-account matter, which was the first file to be
18 investigated, and yet failed to respond to the staff examiner's requests for trust-
19 account information. He then failed to respond in the six client-related files, and
20 has failed to respond in this formal proceeding.
21

22
23 The only definitive mitigating factor present is absence of a prior
24 disciplinary record (*Standard* 9.32(a)). He also has been in practice since
25 October 1998, so this could possibly be construed as inexperience in the practice

1 (Standard 9.32(f)). He possibly could have qualified for personal or emotional
2 problems (Standard 9.32(c)) and remorse (Standard 9.32(l)) based on his
3 statements in the letter he sent to the State Bar (Exhibit 5 from the aggravation
4 and mitigation hearing) but the Hearing Officer would need far more details about
5 these two factors before being able to consider them in mitigation. The Hearing
6 Officer gave Respondent yet another opportunity to provide additional
7 information on these factors, but Respondent did not respond to the invitation.
8 The sole established mitigating circumstance does not warrant a lesser sanction.
9
10

11 PROPORTIONALITY REVIEW

12 Respondents who lacked any disciplinary history, engaged in client-related
13 misconduct, failed to cooperate with the State Bar during the screening
14 investigation and defaulted on the formal complaint have been suspended for six
15 months and one day to two years:
16

17 *In re McGuire*, SB-99-0029-D (1999): McGuire failed, in four cases, to
18 adequately communicate with clients, prepare necessary documents and return
19 unearned fees and client property (in particular, stock certificates) when he
20 abandoned his practice. He at one point intimated to the State Bar that he had had
21 medical problems, but never participated in formal proceedings to explain. The
22 hearing officer found two aggravating factors (multiple offenses and bad-faith
23
24
25

1 obstruction) and one mitigating factor (no disciplinary history). McGuire was
2 suspended for two years.

3 *In re McFadden*, SB-00-0072-D (2000): McFadden was the subject of a
4 five-count complaint alleging that he failed to communicate with clients, respond
5 to their repeated inquiries and return unearned retainers. The hearing officer
6 found three aggravating factors (multiple offenses, failure to cooperate with State
7 Bar and substantial experience) and one mitigating factor (no disciplinary
8 history). McFadden was suspended for two years. However, in addition to his
9 client-related misconduct, he had practiced law while suspended for nonpayment
10 of bar dues and noncompliance with MCLE requirements.

11 *In re Wittges*, SB-00-01075-D (2001): Wittges lost track of a client's
12 small-claims action, resulting in it being dismissed, and failed to respond to the
13 client's inquiries and return papers. The hearing officer found three aggravating
14 factors (pattern of misconduct, multiple offenses and bad-faith obstruction) and
15 four mitigating factors (no disciplinary history, personal or emotional problems,
16 timely restitution and physical disability). Even though the hearing officer
17 recommended censure, the commission found a suspension of six months and one
18 day more proportional. Although he defaulted on the formal complaint, Wittges
19 surfaced briefly, but only to participate in a settlement conference.

1 *In re McCarthy*, SB-01-0121-D (2001): McCarthy failed to communicate
2 with clients, act diligently and return unearned fees. The hearing officer found
3 three aggravating factors (pattern, multiple offenses and failure to cooperate) and
4 one mitigating factor (no disciplinary history). McCarthy was suspended for two
5 years. In addition to the three counts of client-related misconduct, McCarthy also
6 was found to have made misrepresentations to opposing counsel and the State Bar
7 in his only response to one of the screening files.
8
9

10 *In re Yates*, SB-01-0127-D (2001): Yates failed to act diligently and failed
11 to communicate with his client. He also made misrepresentations to her that
12 petitions had been filed. When the client terminated representation, he failed to
13 relinquish her file. The hearing officer found four aggravating factors (bad-faith
14 obstruction, refusal to acknowledge conduct, substantial experience in the law
15 and indifference to making restitution) and one mitigating factor (no disciplinary
16 history). Yates never participated in the proceeding. The case also resulted in a
17 suspension of six months and one day.
18
19

20 *In re Willis*, SB-02-0112-D (2002). Willis failed to communicate with and
21 act diligently for two clients. In one case, she failed to appear in court for the
22 client's hearing in a parental-rights severance proceeding. The hearing officer
23 found three aggravating factors (multiple offenses, vulnerability of victim and
24 substantial experience in law) and four mitigating factors (no disciplinary history,
25

1 no dishonest or selfish motive, personal or emotional problems and remorse).
2 Willis had appeared at one of the aggravation and mitigation hearings. The
3 hearing officer recommended a one-year suspension, which the commission
4 approved.
5

6 *In re Crown*, SB-03-0129-D (2003): Crown engaged in multiple client-
7 related violations as well as trust account violations. The hearing officer found
8 four mitigating factors (multiple offenses, bad-faith obstruction, failure to
9 acknowledge misconduct and substantial experience) and two mitigating factors
10 (no disciplinary history and no dishonest or selfish motive). Crown was
11 suspended for six months and one day.
12

13 *In re Bryn*, SB-05-0098-D (2005): Respondent overdrew his trust account,
14 missed deadlines, failed to file and respond to motions, failed to perform services
15 for his clients and keep his clients adequately informed, all because he chose to
16 spend his time training for the Paralympics rather than taking care of his clients.
17 There were four aggravating factors (selfish motive, pattern, multiple offenses
18 and bad-faith obstruction) and three mitigating factors (personal or emotional
19 problems, inexperience in practice and no disciplinary history). Bryn was
20 suspended for six months and one day.
21
22
23
24
25

DISCUSSION

Having reviewed and considered the State Bar's Proposed Findings of Facts and Conclusions of Law, the Hearing Officer accepts and has incorporated the State Bar's proposed factual findings and legal conclusions, except for its recommendation. The State Bar's position is that Respondent should be suspended from the practice of law for two years. This is a reasonable and fair position based primarily on a review of similar cases and the belief that Respondent's conduct did not involve serious injury to his clients. However, the Hearing Officer disagrees for the following reasons.

On August 18, 2004, the State Bar sent their first screening letter concerning the non-sufficient funds notice on Respondent's trust account. Respondent never responded to that letter, but instead accepted fees from at least four clients, Griffin, Holder, Weide and Whitehead. For three of these clients, Respondent never performed any work. In my view, the lost of \$1,700 alone paid by Ms. Holder in September 2004 for a divorce constitutes serious injury to a client. Furthermore, having had an opportunity to present evidence to mitigate his conduct, Respondent has failed to do so after a multitude of opportunities.

While proportionality review may be helpful in arriving at a just sanction, because no two cases "are ever alike," it is at best "an imperfect process." *In Matter of Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). The State Bar

1 cites eight unreported cases involving somewhat similar conduct in which the
2 Respondents were sanctioned from six months to two years. In my view, such a
3 sanction in this case would not adequately serve as a deterrent to other lawyers
4 nor would it instill public confidence in the State Bar given the total lack of
5 explanation for the conduct.
6

7 RECOMMENDATION

8
9 The purpose of lawyer discipline is not to punish the lawyer, but to protect
10 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
11 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
12 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
13 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
14 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
15 (1994).
16

17
18 In imposing discipline, it is appropriate to consider the facts of each case,
19 the American Bar Association's *Standards for Imposing Lawyer Sanctions*
20 ("*Standards*") and the proportionality of discipline imposed in analogous cases.
21 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
22
23
24
25

1 Upon consideration of the facts, application of the *Standards*, including
2 aggravating and mitigating factors, and a proportionality analysis, this Hearing
3 Officer recommends³ the following:
4

5 1. Respondent should be disbarred.

6 2. Respondent should pay restitution as follows:

7 \$1,700 to Carolyn Holder (count 4);
8 \$750 to William Whitehead (count 6); and
9 \$750 to Pamela Griffith (count 7).

10 3. Respondent shall pay the costs and expenses incurred in this
11 disciplinary proceeding.

12 DATED this 14th day of September, 2005.

13
14
15 John Pressley Todd
Hearing Officer 7X

16 Original filed with the Disciplinary Clerk
17 this 14th day of September, 2005.

18 Copy of the foregoing was mailed
19 this 14th day of September, 2005, to:

20 David Son
21 Respondent
22 7325 North 16th Street, Suite 150
Phoenix, AZ 85020-8206

23 and
24 _____
25

³ The State Bar should be commended for expeditiously pursuing these complaints and requesting a conservatorship within three months after receiving the majority of the complaints.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

David Son
Respondent
5545 East Helena Drive
Scottsdale, AZ 85254-5871

Patricia A. Sallen
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: William